

## SEABOARD AIR LINE RAILWAY *v.* HORTON.

ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

No. 541. Argued November 30, December 1, 1915.—Decided January 10, 1916.

An employé who knows of a defect arising from the employer's negligence and appreciates the risk attributable thereto and continues in the employment without objection or promise of reparation, assumes the risk notwithstanding it arises from the employer's breach of duty. *Seaboard Air Line v. Horton*, 233 U. S. 504.

Where the employer promises reparation of such a defect and the employé relying on such promise continues, he does not, during such time as is reasonably required for its fulfilment, assume the risk unless at least the danger is so imminent that no ordinarily prudent man would, under the circumstances, rely upon such a promise. *Id.* Where, as in the present case, the injury was caused by the absence of a glass protector in front of a water gauge which burst, and the employé had continued after knowledge and promise of reparation, *held* that the trial court did not err in refusing to hold as matter of law